

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GAIL MICHELMAN,

Plaintiff,

v.

LINCOLN NATIONAL LIFE INSURANCE
COMPANY, *et al.*,

Defendants.

No. C10-0271RSL

ORDER REGARDING ATTORNEY'S
FEES, INTEREST, AND DISBURSAL
OF FUNDS

This matter comes before the Court on “Lincoln National’s Renewed Fee Petition” (Dkt. # 114), plaintiff’s “Cross-Motion to Compel Lincoln’s Cure of Deficient Registry Tender” (Dkt. # 118), and “Plaintiff’s Motion to Disburse Funds and to Compel Deposit of Interest” (Dkt. # 119). Having reviewed the memoranda, declarations, and exhibits submitted by the parties, the Court finds as follows:

BACKGROUND

Plaintiff Gail Michelman was the designated beneficiary of a Lincoln National life insurance policy covering her daughter, Elizabeth. When Elizabeth died, Gail’s ex-husband, third-party defendant Irwin Michelman, made a claim for the policy proceeds. Lincoln National notified Gail of the competing claim, admitted that Gail was the named beneficiary and that the policy proceeds were due and payable, and gave the competing claimants thirty days in which to work out their differences. Gail made repeated efforts to obtain information regarding the nature

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1 Elizabeth's death. The parties agree that the amount owed is \$6,694.83.¹

2 Fed. R. Civ. P. 22 allows a party facing the potential of multiple liabilities to join
3 as adverse parties all persons holding claims and to require them to resolve their dispute in one
4 action. Although Rule 22 does not authorize an award of attorney's fees or costs in an
5 interpleader action, "federal courts have continued the former equity practice of allowing fees to
6 interpleading plaintiffs." Schirmer Stevedoring Co. Ltd. v. Seaboard Stevedoring Corp., 306
7 F.2d 188, 193 (9th Cir. 1962).

8 [T]he availability of attorneys' fees for interpleader plaintiffs recognizes that by
9 bringing the action, the plaintiff benefits all parties by promoting early litigation
10 on the ownership of the fund, thus preventing dissipation. Because the
11 interpleader plaintiff is supposed to be disinterested in the ultimate disposition of
12 the fund, attorneys' fee awards are properly limited to those fees that are incurred
13 in filing the action and pursuing the plan's release from liability, *not* in litigating
14 the merits of the adverse claimants' positions. Compensable expenses include, for
example, preparing the complaint, obtaining service of process on the claimants to
the fund, and preparing an order discharging the plaintiff from liability and
dismissing it from the action.

15 Trustees of Directors Guild of Am-Producer Pension Benefits Plans v. Tise, 234 F.3d 415, 426-
16 27 (9th Cir. 2000) (internal quotation marks and citations omitted) (emphasis in original).
17 Whether to award fees and costs is within the discretion of the district court. San Rafael
18 Compania Naviera, S.A. v. Am. Smelting & Refining Co., 327 F.2d 581, 587 (9th Cir. 1964).

19 There are a number of arguments one could make against awarding fees to an
20 interpleading plaintiff, especially in the first-party insurance context. Any award of attorney's
21 fees is unusual in the American system absent a statutory basis. Even more unusual is an award
22 of fees in favor of an insurer and against its insured. In the first-party insurance context – unlike
23 the freight disputes giving rise to the decisions in Schirmer Stevedoring and other seminal cases
24

25 ¹ Although plaintiff argues that she has not conceded that this number is correct (Dkt. # 118 at
26 2), she offers no contrary evidence, argument, or calculations. The \$6,694.83 figure is, therefore,
adopted by the Court and established for purposes of this litigation.

1 in this area – the stake is generally not diminished when competing claims are asserted against
 2 the policy proceeds, thereby reducing the “benefit” of the interpleader action.² In fact, the
 3 primary, if not the only, beneficiary of an interpleader action in the first-party context is the
 4 insurance company. Rather than having to investigate and adjust the competing claims, the
 5 insurer simply turns the matter over to the courts to decide what would otherwise be a common
 6 and ordinary insurance question: who, in fact, is the policy beneficiary. Even better from the
 7 insurance company’s perspective, the initiation of an interpleader action gives the insurer
 8 protection against potential liabilities. The rightful beneficiary, on the other hand, now faces the
 9 expense of litigation and a delay in the payment of the policy benefits.

10 Given that an interpleader action in the first-party context overtly furthers the
 11 insurer’s interests at the expense of its insured (as Gail explained in her communications with
 12 Lincoln National),³ the courts’ willingness to award attorney’s fees to insurers as a matter of
 13 equity is, quite frankly, baffling. This Court is not writing on a clean slate, however. Although
 14 equity is the touchstone of the analysis, the Ninth Circuit views interpleading as a boon to the

15
 16 ² Also contrary to other situations in which interpleaders are common, the rightful beneficiary is
 17 often no more culpable for creating the dispute than the insurer. Assuming culpability is the
 18 justification for an award of attorney’s fees in this context, the fact that a misinformed, greedy, or
 19 vindictive relation asserts a competing claim to life insurance proceeds may support an award of fees
 20 against the unsuccessful claimant, but it does not support a finding that either the insurer or the rightful
 21 beneficiary should single-handedly bear the costs associated with the contest.

22 ³ In a letter dated November 23, 2009, Gail argued that forcing her to litigate an interpleader
 23 action when there was no actual proof to support Irwin’s claims effectively shifted the insurer’s claims-
 24 handling burden to her:


25 Your last letter admits Lincoln intends on ignoring the plain language of its policy so it
 26 can avoid being sued by my ex-husband. Lincoln has acknowledged me as the sole
 recorded beneficiary and yet it refuses to pay the policy benefits. My ex-husband is not a
 beneficiary, he was removed from the policy years ago as provided by the policy itself. It
 would be wrong if my ex-husband sued Lincoln. But it is more wrong for the insurance
 carrier to put its interest in not being sued over its obligation to pay as promised under
 the policy.

1 claimants and has stated that “the proper rule” is to award attorney’s fees. Schirmer
 2 Stevedoring, 306 F.2d at 194. The Court will, therefore, award fees, but has scrutinized Lincoln
 3 National’s petition to ensure that plaintiff pays only those expenses that are reasonably related to
 4 the interpleader.⁴ In addition, plaintiff will not be required to reimburse Lincoln National for
 5 fees expended in its battle with Irwin: Lincoln National had the opportunity to seek fees from
 6 that source and chose not to.

7 CONCLUSION

8 For all of the forgoing reasons, plaintiff’s motion to compel the deposit of interest
 9 is GRANTED and defendant’s motion for an award of fees is GRANTED in part. Lincoln
 10 National owes \$6,694.83 in statutory interest and is entitled to an award of \$6,759.35 in
 11 attorney’s fees. **IT IS HEREBY ORDERED** that the Clerk of the Court shall disburse to
 12 Lincoln National Life Insurance Company, through its counsel Medora Marisseau, \$64.52 from
 13 the Court’s Registry. **IT IS FURTHER ORDERED** that the remaining funds in the Court’s
 14 Registry shall be paid to Gail Michelman, c/o Trust Account of MCB D Law, PLLC, through her
 15 attorney Dan’L Bridges.

16
 17 Dated this 11th day of April, 2011.

18 
 19 Robert S. Lasnik
 20 United States District Judge
 21
 22

23 ⁴ Because Gail initiated this action, some of the normal expenses related to interpleader did not
 24 fall on Lincoln National. In addition, the fees and costs associated with (a) removal of this litigation
 25 from state court and (b) the defense of plaintiff’s bad faith and CPA claims are not recoverable. Having
 26 reviewed the various motions for summary judgment filed by the parties, the Court finds that
 approximately 5% of the insurer’s argument therein were linked to the interpleader issues. Plaintiff will,
 however, be required to reimburse Lincoln National for expenses related to her repeated efforts to
 pursue her argument that interpleader was improper.